IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2023

Pronounced on : 22.12.2023

CORAM : JUSTICE N.SESHASAYEE

CMP.No.6471 of 2023
in CMA.SR.No.141527 of 2022

Deivaraj ... Appellant / Petitioner

Vs

1.M.Rajendran
[R1 set exparte in trial Court]

2.United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street
Royapuram, Chennai - 600 013. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Petition filed under Section 173(1) of the Motor Vehicles Act, praying to condone the delay of 2621 days in filing the appeal.

For Petitioner : Mr.P.Nagaraj

For Respondents : Mr.C.Paranthaman for R2
R1 - Dispensed with vide order dated 14.06.2023

ORDER

The petitioner herein is the claimant in MCOP.No.1808 of 2013, and this petition was filed seeking compensation for the injuries suffered by the petitioner. On 06.06.2015, the Tribunal had passed an award granting him compensation at Rs.8,55,000/-, payable with interest at the rate of 6% p.a.

2. The petitioner has now laid this appeal seeking enhancement of compensation with a delay of 2621 days. In his affidavit, the petitioner has averred that he was sick, and hence he could not instruct his counsel in time. Beyond this solitary statement, there is nothing in this petition to indicate the nature of illness.

3. The second respondent-insurance company has filed its counter, wherein it has contended that challenging the award of the Tribunal, the insurance company has preferred an appeal in C.M.A.No.1326 of 2019. During the pendency of the said appeal, the petitioner has filed the execution petition for realising the compensation amount. The insurance company, on its part, has deposited the entire compensation amount as awarded by the Tribunal and the same was withdrawn by the petitioner. Therefore, on 28.02.2019,

the insurance company informed the Court of its intent to withdraw the appeal, and accordingly C.M.A.No.1326 of 2019 came to be dismissed. There is no justification for the petitioner to file this appeal now with a delay of 2621 days.

4. Heard both sides. The counsel for the petitioner struck to his line of contentions, whereas the counsel for the second respondent submitted that the affidavit of the petitioner does not disclose the nature of sickness suffered. On the other hand, the petitioner had participated in the proceedings before the Tribunal, that he had also laid E.P., and had also withdrawn the compensation amount deposited. Therefore, the delay cannot be condoned, more so, because the second respondent had withdrawn its appeal in C.M.A.No.1326 of 2019.

5.1 This Court carefully weighed the rival submissions. The petitioner herein had laid the petition only under Section 163-A of the Motor Vehicles Act. The Tribunal had reckoned his income at Rs.40,000/- per annum, and applied 17 as a multiplier. What best it could do, it has done. And it has also taken the disability of the petitioner/appellant at 100% since the petitioner has suffered major injuries to his vertebral column. Since the petitioner had laid the petition under Section 163-A, and since the Tribunal itself has reckoned his disability at 100%, and also applied 17 as multiplier after reckoning his income at Rs.40,000/- per annum, there is not even a possibility for him to seek enhancement of compensation.

5.2 Now turning to the merit of this petition, as rightly argued by the counsel for the second respondent, this petition is filed after the petitioner had withdrawn the entire compensation amount, and that the petitioner has not adequately explained the delay either.

6. Given the nature of this case, this Court does not incline to condone the delay, and the petition stands dismissed.

22.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
ds

N.SESHASAYEE.J.,

ds

Pre-delivery in
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<u>22.12.2023</u>